

Application No. 10/586,478

Docket No. R2184.0525/P525

**REMARKS**

The specification has been editorially revised. Claims 1 and 19 have been amended. Applicant reserves the right to pursue the original claims and other claims in this and other applications.

Claims 1-4, 13-15 and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Kimura in view of Ohsato, and further in view of Fujita. Reconsideration is respectfully requested.

Claim 1 is amended to recite, among other things, a feature of "substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section, the light shone by the light source on the optical disk being focused on one of the first recording layer and the second recording layer." As will be described in the following, this feature of claim 1 is a distinction over the asserted combination of references.

The Office Action on page 4, lines 14-18, states: "if in Fig. 7 of Kimura, the light is present on recording layer 511 in an unfocused state (which is a common occurrence as taught by Fujita), then substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section." The Office Action further goes on to state: "since claim 1 does not state whether or not light is present on the first and second recording layers in focused or unfocused states, the claim has been interpreted broadly to be claiming the occurrence that light is present on both the first and second recording layers in unfocused states."

The above-noted feature of claim 1, as amended, expressly requires: "the light shone by the light source on the optical disk being focused on one of the first recording layer and the second recording layer." Accordingly, the claim as amended cannot be interpreted broadly to be claiming the occurrence that light is present on both the first and second recording layers in unfocused states.

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Kimura discloses at column 6, lines 60-62: "FIG. 7 shows a state where the focus of the objective lens 41 is adjusted to be on the first optical information medium layer 511." Further, Fig. 7 of Kimura clearly illustrates the light is focused on the information medium layer 511 as required by the above-noted feature of claim 1. None of the light detecting elements of photodetector 53 illustrated in Fig. 7 of Kimura, however, reads on the claimed first photo detecting section and the second photo detecting section because claim 1 recites "substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section."

Accordingly, Kimura fails to disclose the above-noted feature of claim 1, namely "substantially no light reflected by the first recording layer reaches the second photo detecting section, and substantially no light reflected by the second recording layer reaches the first photo detecting section that is adjacent to the second photo detecting section, the light shone by the light source on the optical disk being focused on one of the first recording layer and the second recording layer."

Neither Ohsato nor Fujita cures the deficiency of Kimura.

Accordingly, the invention of claim 1 as amended distinguishes over the asserted combination of references, i.e., Kimura, Ohsato, and Fujita. Claims ultimately depending from claim 1 are also patentable at least for the same reason.

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Claim 19 is amended similarly to the manner in which claim 1 is amended. Claim 19 as amended is thus also patentable.

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